

with a dated notice encouraging applicants to retain their application package and the notice in the event the 5,000 limit is expanded or eliminated and the alien wishes to apply again. The Service will keep an identifying chronological record of the application for purposes of processing applications under this section if the 5,000 limit subsequently is expanded or eliminated. If at the time the 5,000 limit is reached, it appears that Congress is about to pass legislation to expand or eliminate the cap, the Service retains the discretion to retain such applications and the related fees.

[67 FR 78673, Dec. 26, 2002]

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the 8 CFR, such regulation is controlling to the extent that it conflicts with this section.

(b) *The number of documents.* If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) *Service-issued documentation.* To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I-94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I-862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I-122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required

date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I-221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under section 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date that establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(1) A state driver's license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record

that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

[67 FR 78674, Dec. 26, 2002]

§ 245.23 Adjustment of aliens in T non-immigrant classification.

(a) *Eligibility of principal T-1 applicants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as a T-1 nonimmigrant, as defined in 8 CFR 214.11(a)(2); and

(ii) Continues to hold such status at the time of application, or accrued 4 years in T-1 nonimmigrant status and files a complete application before April 13, 2009;

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T-1 nonimmigrant or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period of time is less; provided that if the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act;

(4) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment;

(5) Has been a person of good moral character since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status; and

(6)(i) Has, since first being lawfully admitted as a T-1 nonimmigrant and until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as defined in 8 CFR 214.11(a), or

(ii) Would suffer extreme hardship involving unusual and severe harm upon